

INTERAGENCY COORDINATION AGREEMENT
ON
MITIGATION BANKING
WITHIN THE REGULATORY BOUNDARIES OF
CHICAGO DISTRICT, CORPS OF ENGINEERS
June 2008

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SECTION 1 - PURPOSE

1. The Chicago District of the U.S. Army Corps of Engineers (Chicago District), the U.S. Environmental Protection Agency (USEPA), and the U.S. Fish and Wildlife Service (USFWS) hereinafter referred to as the Interagency Review Team (IRT), pursuant to their statutory authorities and in recognition of the need to better manage the waters of the United States, including wetlands, do hereby agree to support the establishment of compensatory mitigation banks in Cook, DuPage, Kane, Lake, McHenry, and Will Counties, in northeastern Illinois. Further, the IRT agrees that said mitigation banks can serve to provide compensatory mitigation for unavoidable impacts due to the filling, flooding, excavating, or draining of waters of the United States as regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.
2. This Interagency Coordination Agreement (ICA) includes the criteria for establishing, owning, and operating mitigation banks. It further sets out the criteria for authorizing applicants (e.g., individuals, corporations, units of government) to withdraw credits from a mitigation bank to offset unavoidable impacts that would result from the applicant's proposed activity. The IRT intends that this interagency coordination agreement serve as a basis for establishing and certifying mitigation banks and authorizing the withdrawal of credits from the bank. The Chicago District will take the leadership role in the review and approval of mitigation bank projects. It is the intent of the signatory agencies that this guidance be applied to mitigation bank proposals submitted for approval on or after the effective date of this agreement, and to those in the early stages of planning or development. It is not intended that this agreement be retroactive for mitigation banks that have already received agency approval under previous versions of the ICA. For approved mitigation banks that were multi-phased, those phases which were not started at the time of the effective date of this agreement shall also be subject to the terms of this agreement.
3. The establishment of compensatory mitigation banks and the determination of a project's eligibility for use of a bank shall be in compliance with all applicable regulations and guidelines, as noted under SECTION 3: (AUTHORITIES) of this document.

SECTION 2 - DEFINITIONS

1. “Adaptive Management”: The development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a

compensatory mitigation project and the identification and implementation of measures to rectify those problems.

2. “Certified Credit”: A formal determination by the Chicago District Corps of Engineers that mitigation bank credits have met full performance standards and long term management obligations as agreed by the IRT.
3. “Department of the Army Permits” or “DA Permits”: Authorizations for the discharge of dredged or fill material into waters of the United States, including wetlands, issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.
4. “Designated Service Area”: The geographic area within which impacts can be mitigated at a particular mitigation bank; the designated service area of a mitigation bank is the watershed in which it is located, as shown on Appendix A of this document.
5. “Enhancement”: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area. Because impacts associated with individual projects that propose to use bank credits will, in virtually all cases, be permanent, only enhancement that results in permanent improvement of functions and values of aquatic resources will generate credits.
6. “Establishment (Creation)”: The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.
7. “Growing Season”: The period between April 15 and October 20 of any calendar year. This growing season definition is for the purposes of this document alone, and is used to establish performance periods for determining compliance with performance standards. It is an average of the growing seasons established by the six counties within the jurisdictional boundaries of the Chicago District Corps of Engineers. It does not establish the growing season for purposes of wetland delineation.
8. “Interagency Review Team” or “IRT”: An interagency group of Federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for and advises the Corps on the establishment and management of a mitigation bank. Currently, within the boundaries of the Chicago District, the representatives of the U.S. Army Corps of Engineers Chicago District, U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency will be responsible for the evaluation of proposed mitigation banking projects and their performance.

9. “Ledger”: Document to be used in the accounting of credits and debits. A ledger will be maintained by the bank sponsor and audited by the Chicago District on an annual basis.
10. “Management”: Actions taken within a mitigation bank to establish and maintain desired habitat conditions. Representative management actions include, but are not limited to, water level manipulations, herbicide use, mechanical plant removal, and prescribed burning.
11. “Mitigation Bank”: A site, or suite of sites, where [aquatic?] resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. It is a system of accounting for the loss and compensation of aquatic resources, which can include one or more compensatory mitigation sites.
12. “Mitigation Bank Credits”: The unit of measure representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the aquatic resources restored, established, enhanced or preserved. For the purposes of this document, the unit of measure for bank credit will be acres.
13. “Mitigation Bank Instrument”: A written legal document which contains specifications pertaining to establishment, operation, use and maintenance of a compensatory mitigation bank. The instrument codifies the goals, objectives, procedures of the bank, as well as identifies a long term manager, and incorporates the relevant terms and conditions of this interagency agreement.
14. “Monitoring”: A specific program of data collection which documents the physical, chemical, and biological characteristics of the Mitigation Bank, for the purpose of determining compliance with performance standards established in Appendix B.
15. “Preservation”: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.
16. “Prospectus”: A plan for a compensatory mitigation bank prepared by a potential bank sponsor and submitted for consideration to the interagency review team. The prospectus provides full discussion of the proposed mitigation bank and serves as the basis for the public and interagency review comments

17. “Restoration”: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories:

a. “Re-establishment”: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

b. “Rehabilitation”: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

18. “Site Development Plan (Mitigation Plan)”: A plan for the proposed bank site that identifies all actions that will be undertaken to generate bank credits. Representative elements of the site development plan include, but are not limited to, plans for site grading, re-vegetation, establishment of hydrology, erosion control, structures, proposed utilities, management, and monitoring.

19. “Single User”: For the purposes of this document, a single user is defined as a governmental or public authority established by state or federal statute. Any banks established for the sole use of the single user will be used to satisfy mitigation requirements for impacts caused by said single user on multiple projects in any watershed

20. “Sponsor”: Any public or private entity responsible for establishing and/or operating a compensatory mitigation bank.

21. “Waters of the United States”: Those areas subject to U.S. Army Corps of Engineers regulatory authority pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, as defined at 33 C.F.R. § 328.3(a).

22. “Wetlands”: Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Examples of wetland types may be found in Classification of Wetlands and Deepwater Habitats of the United States, (December 1979), published by the United States Fish and Wildlife Service, or in Wetland Plants and Plant Communities of Minnesota and Wisconsin (1987), by Eggers and Reed.

23. “Watershed Plan”: A plan developed by federal, tribal, state and/or local government

agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, or preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and aquatic resource management plans.

24. “Compensatory Mitigation”: Replacement of aquatic resources and its functions and values, for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. The replacement of the wetland functions and values is generally accomplished through wetland restoration (re-establishment or rehabilitation), creation (establishment), enhancement, or in exceptional circumstances, wetland preservation.

SECTION 3 - AUTHORITIES

1. The establishment and use of mitigation banks, as described in this document, shall be in accordance with all applicable statutes, regulations, and policies, including, but not limited to the following:

- a. Final Rule for Regulatory Programs of the Corps of Engineers (33 C.F.R. Parts 320-332, as amended);;
- b. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230, as amended) (Section 404 (b) (1) Guidelines);
- c. Clean Water Act (33 U.S.C. §§ 1251 et seq.);
- d. Rivers and Harbors Act of 1899 (33 U.S.C. § 403);
- e. Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.);
- f. Endangered Species Act (16 U.S.C. §§ 1531 et seq.);
- g. National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.);
- h. National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 et seq.)

SECTION 4 - CONSIDERATIONS IN ESTABLISHMENT AND USE OF MITIGATION BANKS

1. A mitigation bank may be either publicly or privately owned. The bank may be incorporated as for-profit or not-for-profit. Public ownership may be by any public authority: municipal, county, regional, state or federal agency.
2. Mitigation bank instruments, mitigation sites, and associated credits shall be subject to approval by the Chicago District, in consultation with the IRT. Every mitigation bank shall have

as its primary purpose the generation of mitigation credits to offset the unavoidable loss of wetlands and other waters of the United States. Credits may be generated using restoration, enhancement, establishment, and in certain circumstances preservation.

3. In all cases, the Chicago District will issue a public notice describing the project. The public comment period for submittal of relevant comments on the bank prospectus will be a minimum of 30 days. If a Department of the Army (DA) permit is needed in order to construct, restore, or enhance aquatic resources on the bank site, the Chicago District will follow normal permit processing procedures. If no DA permit is required to construct the bank, the banking instrument will serve as the primary legal binding document.

4. Operation, maintenance, and adaptive management procedures approved by the Chicago District in coordination with the IRT shall be employed to maintain the aquatic resources in the bank as dictated by the performance standards noted in its instrument. Management of the mitigation bank shall be based on a monitoring plan approved by the Chicago District in coordination with the IRT. Monitoring shall include, but shall not necessarily be limited to, monitoring of the water, soil, plants, and wildlife comprising the assets of the bank. The bank sponsor shall strive to manage the assets to provide multiple benefits such as water quality management, wildlife habitat, flood control, biological conservation, and educational and recreational opportunities. Mitigation banks shall be designed to be ecologically self-sustaining with appropriate long term management plans and sufficient financial resources to maintain it.

SECTION 5 - GENERAL GUIDELINES

1. Using normal review procedures prescribed by regulation, the Chicago District will conduct project evaluations and will determine the level of mitigation required, and whether a project is eligible to use a mitigation bank. The following general guidelines will be used in determining whether use of a bank is appropriate:

a. All appropriate and practicable steps to avoid and minimize adverse impacts to aquatic resources, as determined by the Chicago District, must be reflected in an applicant's project plan before authorization to use a mitigation bank will be granted.

b. It is the goal of the IRT that project impacts be mitigated at bank sites that are located within the same watershed as the project site (for the purposes of this document, watershed boundaries are those shown on Attachment A). In the event that project impacts are allowed to be mitigated at bank sites outside of the project watershed, higher credit ratios may be routinely required.

c. Preservation of aquatic resources will be considered for mitigation credit in exceptional circumstances (e.g., existing wetlands of extremely high functional value, and where incorporation of said resources into a bank would further enhance or protect their value). Credits attributed to the preservation of existing aquatic resources may become available for debiting immediately upon implementation of appropriate legal protection (such as a conservation easement) of the bank site, and at the discretion of the IRT.

d. Ideally, mitigation banks should be a way of restoring and establishing aquatic resources in advance of development projects that result in losses to aquatic resources. This agreement provides for limited, incremental sales of uncertified credits, and for the issuance of Department of the Army permits based on uncertified credits according to the guidelines found in SECTION 12: Bank Operations. Because the development plan for any given bank site may require the sale of a minimum number of credits before the aquatic resources being credited may be restored or constructed, the IRT requires a higher mitigation ratio for the use of uncertified credits, and for funds to be maintained in an appropriate financial security to ensure construction of the bank's wetlands. This agreement also limits the number of credits that can be sold prior to construction, and prior to final certification.

e. Mitigation bank selection should utilize a watershed approach and fully consider the ecological needs of the watershed. Where an appropriate watershed or sub-watershed plan is available, mitigation bank site selection should be based on recommendations in the plan. The applicant must describe in detail how the site was chosen and will be developed, including mitigation based on the specific resource need of the impacted watershed.

f. Recognizing that current methods of assessing functions and values for aquatic resources are complex and variable by purpose, emphasis will be on the replacement of wetland acreage and type. Therefore, the preferred method of generating bank credits will be the re-establishment of former wetlands which will result in a net gain in wetland acreage on the bank site. Permanent wetland enhancement, rehabilitation and preservation as a means of generating bank credits will be considered on a case by case basis. Appropriate functional value assessment methodologies and credit ratios will be determined for each site by the Chicago District, in consultation with the IRT.

g. Performance standards are detailed in Appendix B.

h. As a general matter, compensatory mitigation banks may not have an adverse impact to sites that:

i. Have important hydrologic functions which, if altered, would have a significant adverse effect on the source, quality, or seasonal distribution of surface and/or groundwater supply of important habitats;

- ii. Have been identified as important wetlands under the Corps/USEPA Advanced Identification process;
 - iii. Provide important habitat for State or federally listed endangered or threatened species;
 - iv. Are identified in the Illinois Natural Areas Inventory;
 - v. Provide important breeding, foraging, or resting areas for migratory birds or other wetland-dependent wildlife;
 - vi. Have high native plant species diversity, reflecting relatively undisturbed conditions.
- i. The mitigation bank, once established, must be dedicated to maintaining the functions and values of aquatic resources as established in the banking instrument, as determined by the IRT.

SECTION 6 - SITE SELECTION CRITERIA

1. The bank site will be reviewed with respect to the following site selection criteria. Failure to meet any of these criteria may be, depending on circumstances, grounds for rejection of a bank site. The site shall:
- a. Be owned and/or under the full control of the bank sponsor. The sponsor shall provide documentation of this in the form of deed, agreements between sponsor and legal owner of the property regarding use of property and protection in perpetuity;
 - b. Contain a majority of drained or hydrologically modified hydric soils, recognizing that re-establishment of former wetlands is the preferred form of mitigation;
 - c. Have no high quality wetlands that would be adversely affected by the construction or restoration work;
 - d. Contain adequate perimeter upland areas to buffer the wetlands from potentially incompatible land uses on adjacent parcels;
 - e. Be so situated that adequate hydrology can be ensured (e.g., be located on a floodplain or possess a high groundwater table);
 - f. Contain no known hazardous waste, which must be confirmed by an environmental

assessment conducted by a qualified person or firm;

g. Have a size sufficient to generate a minimum of 25 acres of credit;

h. Be in the position such that the development of the site must not adversely affect federal or state listed endangered or threatened species, or their habitat, or other high quality habitats or natural areas such as oak groves, prairies, or savannas; and

i. Although each site should be selected and managed to utilize the natural water storage functions of wetlands, flood control shall not be the primary purpose. Specifically, banks shall not be used to satisfy local or regional stormwater detention requirements.

2. In addition, it may be preferable that the site:

a. Be proximate or adjacent to public land holdings so as to create contiguous, large-scale habitat areas;

b. Be inclusive of (but not limited to) an adopted or accepted watershed plan, open space plan, conservancy district, protected riparian corridor, or other local or regional conservation land use plan. This criterion has been established in order to help implement local and regional conservation plans, and to ensure maximum consistency and compatibility with future surrounding land uses;

SECTION 7 - FEASIBILITY

1. The individual or entity proposing to sponsor establishment of a mitigation bank will initially hold informal discussions with the IRT. The purpose of these discussions will be to acquaint the sponsor with the legal, regulatory, and ecological background relevant to banking and to provide procedural guidance to the prospective applicant, regarding bank instrument processing and any associated timelines

2. It is highly recommended that the applicant request a pre-application meeting with the IRT prior to submitting a prospectus. This meeting, which may include a site visit, will help the IRT decide if the site meets the site selection criteria and if the plan is appropriate for the proposed site. At a minimum, the following information should be submitted to the IRT with the request for a pre-application meeting:

a. Maps (site location, USGS topographic map, NWI map, soil survey, aerial photographs)

b. Existing vegetation

c. How hydrology will be established

- d. What vegetative communities will be established
- e. Likely future adjacent land uses
- f. Connectivity to other natural areas
- g. Existing drainage patterns of site and surrounding properties

SECTION 8 - PROSPECTUS DEVELOPMENT

1. The purpose of the prospectus is to provide sufficient information to allow the interagency review team to determine if the general considerations and site evaluation criteria outlined in this agreement are likely to be met if the proposed bank is established. It is understood that the prospectus will become the basis of the mitigation bank instrument. The prospectus must contain, but is not limited to:

- a. The bank location and size;
- b. A discussion on how the proposed bank will be established and operated; c. A plan that details the goals, objectives, the general need for and the technical feasibility of the proposed bank;
- d. Success criteria for creating wetlands, including wetland types and their respective acreages;
- e. A discussion of the ecological suitability of the proposed site, and how that site will support the planned types of aquatic resources and functions, including the assurance of sufficient hydrology to support the long-term sustainability of the bank;
- f. A delineation of any wetlands or other jurisdictional areas that may exist at the proposed bank location;
- g. Identification of the proposed service area(s);
- h. The type of real estate interest in the bank property;
- i. A legal description of the property;
- j. The type of bank (i.e., single user or general use etc.);
- k. The method of credit production (i.e., establishment, re-establishment, enhancement, rehabilitation, and preservation) the number of proposed credits by each method, and the rationale for crediting;

- l. A statement as to how the submittal complies with this document;
- m. A general site plan showing the location of all existing and proposed aquatic resources and upland habitats, roads, trails, structures, utilities, and any other existing or proposed site improvements;
- n. An outline of the proposed ownership arrangements and long-term management strategy and responsibilities which, at this stage, should include a signed and executed agreement or letter of intent from the long-term owner/manager, and the acceptance of a conservation easement or similar instrument for site protection, [but will be required before credit certification];
- o. A preliminary construction plan and schedule of completion, preliminary planting plan, and preliminary administrative, management, monitoring, and financial plans;
- p. Incorporation documentation for the mitigation bank, if appropriate;
- q. Locations of all hydrological monitoring wells and vegetative monitoring transects for the site;
- r. Inclusion of a soil erosion and sediment control plan (SESC). Any erosion control plan must be approved by the appropriate Soil and Water Conservation District/Stormwater Management Commission before final approval of the banking instrument;
- s. A site development plan which shall identify and incorporate to the extent practicable and appropriate:
 - i. Diverse aquatic and supporting landscapes (e.g., shallow open water, riparian wetlands, deep and shallow marshes, floodplain forests, sedge meadows and prairies, upland buffers, etc.) which are interrelated, so as to maximize wetland functions and values;
 - ii. Diverse wildlife habitats;
 - iii. Associated upland buffer areas contiguous to the wetlands to protect the wetlands from potential adverse effects of adjacent land uses, specifying the width and area of all such zones;
 - iv. Species native to the area;
 - v. The use of native soils on the site;

vi. The means for establishing the appropriate hydrology, and;

vii. Design, maintenance, and monitoring procedures which minimize energy needs, human intervention, and costs. Ideally the procedures should require only periodic weed and pest control and prescribed burns, where appropriate; and

t. A discussion of the qualifications and experience of the proposed bank sponsor, including any information of past activities or projects.

SECTION 9 - FINANCIAL ASSURANCES

1. General

The bank sponsor is responsible for securing sufficient funds or other financial assurances to cover contingency actions in the event of bank default or failure. The bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, and to make provision for long-term management through financial assurances or through agreements with land management organizations or agencies. Total funding requirements should reflect realistic cost estimates for land acquisition, planning, engineering, mobilization, construction, bank operations, monitoring, long-term maintenance, contingency and remedial actions, as well as the cost of replacement mitigation. The bank instrument shall include a special condition requiring that the financial assurance(s) be in place prior to commencing the permitted activity. Verification of financial assurances shall be made annually as a part of the yearly bank audit. Documented proof of financial assurances shall be submitted to the District by February 15 of each calendar year (See Section 12: Bank Operations). However, sponsors for single user banks will not be required to obtain or submit financial assurances.

2. Financial Assurances

Formats of Financial assurances may be in the form of irrevocable letters of credit (Appendix C), irrevocable trusts, escrow accounts, and non-wasting endowments. It is required that the written format for the financial documents be approved by the District before they are finalized. These assurances shall be held by financial institutions and/or public entities, not other private concerns, and shall avoid all foreseeable conflicts of interest. The mitigation bank sponsor shall insure that adequate funds are available to ensure land acquisition, planning, engineering, mobilization, construction, bank operations, monitoring, long-term maintenance for the bank and associated uplands, contingency and remedial actions, as well as the cost of replacement mitigation. The financial assurances must be maintained until all credits have been certified or the IRT has determined the mitigation bank is self-sustaining. The amount of the financial assurance will be reviewed annually based on the results of the monitoring report. A financial

assurance must be in a form that ensures that the district engineer will receive notification at least 120 days in advance of any termination or revocation. For third party assurance providers, this may take the form of a contractual requirement for the assurance provider to notify the district engineer at least 120 days before the assurance is revoked or terminated. All financial assurances shall be payable at the District's direction to a specified designee or to a standby trust. If a standby trust is utilized, all amounts paid by the assurance provider shall be deposited directly into the standby trust fund for distribution by the trustee in accordance with the District's instructions.

3. Bank Construction/Operation

Cost estimates must be presented as a part of the prospectus. The estimates must cover activities for all restored, established, enhanced or preserved aquatic resources included as a part of the bank. In addition, a proposed schedule of release of the financial assurance following completion of specific tasks associated with the establishment of the bank must also be submitted for approval. Upon approval by the District (in consultation with the IRT), such financial assurances may be reduced once it has been demonstrated that the bank is meeting performance milestones (during the course of bank operations) in accordance with the approved performance standards. For example, sponsors may request a reduction in financial surety as a part of their credit release submittal, if it is found that the site is performing well and that the IRT has no objections.

4. Long-Term Management

In addition to the required financial assurances, bank sponsors must submit a financial plan that demonstrates that the bank and its wetlands can be maintained in perpetuity whether through continual ownership or by conveyance to a public or private agency that will assume the responsibilities of the bank site. Such a submittal shall outline a plan for the establishment of a fully funded endowment for long term site management activities. The submittal must include a description of long-term management needs, annual cost estimates for those needs, and identify the funding mechanism that will be utilized to meet the needs. The provisions necessary for long-term financing must be addressed in the banking instrument.

5. Failure to comply with the requirements of this Section may be grounds for suspension and/or revocation of the bank instrument.

SECTION 10 - ESTABLISHING CREDITS

1. The units of wetland credit shall be acres of wetland. Mitigation bank credits shall be generated as wetlands are created (established), restored (re-established or rehabilitated), enhanced, or preserved on the bank site, resulting in an increase in wetland acreage and/or

quality on the bank site. Banking credits may be generated as follows: Full credit will be given for wetland establishment (creation) from upland and for re-establishment of former wetlands. Partial credit (specified in each bank instrument) can be given for permanent enhancement or rehabilitation of degraded wetlands or in exceptional circumstances, preservation of existing wetlands. The appropriateness of enhancement, rehabilitation, and preservation, and the corresponding credit ratio will be determined by the Chicago District in coordination with the IRT. A maximum of 30% of the total potential credits generated by the bank may be derived from enhancement or rehabilitation of existing degraded wetlands. Preserved wetlands may constitute no more than 15% of the total potential credits generated by the bank. Associated upland buffers should be included as part of each mitigation bank, but should not represent more than 15% of the total credits generated.

2. Certain types of enhancement or rehabilitation of existing wetland can be an acceptable way of generating credits if the enhancement or rehabilitation actions are scientifically sound and result in a substantial, measurable, and permanent increase in the level of wetland function. In general, the types of rehabilitation that will be viewed most favorably and receive the greatest amount of credit include the following examples:

a. Improvement of wetland hydrology at sites that have been significantly modified through tile drainage or ditch drainage;

b. Re-establishment of diverse native plant communities where the original plant community has been totally destroyed, and the site is currently farmed or has re-vegetated with aggressive and/or exotic species such as reed canary grass, cattails, purple loosestrife or other species. Restoration goals would include the removal of the exotic or aggressive species, and the introduction and establishment of a diverse assemblage of native species appropriate for the site considering geographic location, soils, hydrology, and other factors. Selective removal of exotic species in otherwise healthy native plant communities will normally not be considered eligible for credit

c. Rehabilitation or establishment of deep marsh habitat through shallow impoundment, where the purpose is to create conditions suitable for all types of fauna and/or aquatic life of concern. This approach is appropriate at sites that have been significantly altered through partial drainage, and consist largely of dense monotypic stands of cattails or other aggressive species. It is not appropriate for sites that have existing biodiversity or habitat values that would be adversely affected by the proposed actions or where the level of benefit would be minimal. The prospectus must specifically state which aspects of wetland function would be increased as a result of the enhancement or rehabilitation actions, the level to which they would be increased, and the scientific basis for expecting the increase. It must also include a narrative description of how the enhancement would be accomplished, a schedule of completion, explicit performance standards, and performance milestones for enhancement actions to be carried out over a defined period of time.

3. Performance standards for enhancement or rehabilitation work will be considered on a case-by-case basis. Actions such as the restoration of hydrology can be implemented in a very short time, and can be measured through immediate water level responses. Plant community restoration is a lengthier process, requiring sustained effort over a period of time. In such cases, interim performance milestones may be established, and credits resulting from such work would be included in the final 35% increment of credit released from the bank.

4. Credit ratios will be determined based on specific circumstances for each bank. Re-establishment of a historic wetland area or creation (establishment) of a wetland from an upland area would receive a credit ratio of 100%. Actions that restore a much degraded wetland to a high degree of function, such as restoring normal hydrology to a drained wetland, or restoring a high level of species diversity to a monotypic plant community, may receive credit at a maximum ratio of 50% of the credit values awarded to restored or created wetlands. Ratios for actions of lesser value may be only 10% to 25% credit, or may be determined to be unsuitable for mitigation credit.

5. An example of a situation where flexibility may be shown by the IRT in determining the appropriate credit rate for rehabilitation is where farmed wetlands are proposed for rehabilitation credit. These sites are wetland by definition because they meet the three technical criteria for wetland delineation; however, they have extremely limited wetland habitat, biodiversity, and water quality functions because of the highly altered hydrology and because they are cultivated for crop production as often as annually. Restoration of hydrology at sites that have been significantly modified (e.g., farmed wetlands) has been identified in this ICA as a rehabilitation action that will receive the greatest amount of credit because it results in significant net gain in wetland function. Similarly, establishing native plant communities is identified as a rehabilitation action deserving of significant credit where existing biological diversity is very low, a condition typically present in farmed wetlands. Where both of the aforementioned actions are proposed for a site, and where other ICA siting criteria are met, flexibility may be shown in determining the proportion of total credits that can be generated through rehabilitation. The regional importance of the site from a conservation perspective, such as the site's potential to support regional populations of wildlife species of concern, including as State- or Federally - listed endangered and threatened species may also influence the credits awarded.

6. The appropriate ratio for crediting preserved wetlands will be determined through the bank review process, and will, in most cases, be less than the ratio for established or re-established wetlands. Ratios for preserved wetlands may be between 10% to %15 of the credit ratios for restored and created wetlands.

7. Limited credit may be granted for upland areas where it can be demonstrated that such areas would provide tangible benefits to the bank, such as nutrient or sediment filtering of water entering the site, or other functions that would serve to enhance or maintain the ecological

integrity of the bank. The determination of the credit to be granted upland areas must be based on clearly demonstrated functions, and not on general ecological values. In general, the credit ratio for the inclusion of upland areas will be 25%, but may be adjusted as deemed appropriate by the interagency review team during the evaluation of the bank prospectus. Upland areas must be afforded the same protection as the rest of the bank. No credit will be considered for upland areas that are not part of the bank site (for example, adjacent forest preserve land or other public lands). Since the goal of mitigation banking is to offset wetland losses, credits generated from inclusion of upland areas will comprise only a small percentage (less than 15%) of the total credits generated by the bank.

8. The inclusion of upland and deepwater environments within a compensatory wetland mitigation bank may be inadvertent (i.e., due to topographic reasons and real estate considerations) or planned (i.e., to realize or enhance certain wetland functions). In the latter case, upland areas may be either naturally occurring or be artificially created and, depending on their basic purpose, may occur along the periphery of the bank or be dispersed throughout.

9. If the inclusion of upland and deepwater areas is clearly inadvertent and has no demonstrable wetland enhancement/rehabilitation function, no mitigation credit would be accorded such areas. However, if beneficial effects can be clearly demonstrated, such environments would be accorded credit for mitigation purposes which is proportional to their functional contribution.

10. In summary, see the table below:

Type of Mitigation Credit	Range of Credit Rate per Acre Allowed for Mitigation Type	Percent of Total Credits Allowed for Mitigation Type
Preservation	10-15%	15%
Establishment (creation)	100%	No maximum
Re-establishment	100%	No maximum
Rehabilitation	10-50%	30% together with Enhancement
Enhancement	10-50%	30% together with Rehabilitation
Upland Buffer	10-25%	15%
Other Upland features	10-25%	15%

SECTION 11 - CREDIT CERTIFICATION

1. Some uncertified credits will be available for use upon approval of the bank instrument, per the terms of this ICA. Uncertified credits may also be released by the District (in consultation with the IRT) once the banker has demonstrated that the hydrology and interim vegetation

performance standards have been met. Mitigation bank credits shall be certified by the District when the bank meets all final performance standards as noted in Appendix B. Credits may be certified at any time, but the performance standards for certification shall be met no later than five years from the date of planting unless otherwise specified in the bank instrument and/or approved by the IRT.

2. At the end of five years, if any of the above conditions are not met, the authorized agent of the bank shall submit a plan to the District outlining corrective measures to be taken based on the ecological conditions of the site. Management activities shall continue until the standards are met, as verified by the IRT.

3. Requests for credit release will be reviewed by the IRT twice annually, after the field inspection. Field reviews will be conducted in the spring (May/June) and fall (September/October). If credit release is desired, prior to the fall review, the bank sponsor must provide a wetland delineation of the site, indicating current site conditions. All bank performance related information must be provided to all IRT members before any response to any credit release requests is made.

SECTION 12 - BANK OPERATIONS

1. Upon authorization of the mitigation bank, through a Department of the Army permit or banking instrument, the sale of credits and the creation or restoration of aquatic resources and buffers may commence.

2. Uncertified and certified credits may be sold provided that adequate funds, as approved by the IRT, are established through an escrow account, irrevocable letter of credit (Appendix C), or other financial surety for the generation of certified credits and long-term maintenance of the bank site;

3. Credit sales may commence upon approval of the banking instrument. A maximum of 30% of the total potential credits may be sold prior to construction, based on approval of the banking instrument and the posting of adequate financial assurance. Upon determination by the IRT that appropriate wetland hydrology has been demonstrated throughout the bank site, an additional 15% of the total credits may be sold. Upon determination by the IRT that the interim vegetation performance standards have been met and continued demonstration of wetland hydrology, another 20% of the total credits may be sold. The final 35% of the total credits may be sold upon full performance (See Appendix B). For all mitigation banks, partial site/credit release shall be in accordance with this paragraph. For final credit release, all of the credit acreage must satisfy all performance standards as approved by the IRT.

4. For all single-user mitigation banks, no pre-construction credit sales shall be allowed due to

the absence of financial assurances. No sales shall be allowed until certain ecological performance standards have been met. Said performance standards will be identified in the individual banking instrument. After initial construction at the site, and upon determination by the IRT that appropriate hydrology standards have been met, 15% percent of the total credits at the site will be made available for sale. An additional 20% of the total credits will be available for sale after the site has met interim vegetation performance standards and continued demonstration of wetland hydrology (See Appendix B). The final 65% of total credits will be made available for sale upon full certification.

5. The initial physical and biological improvements at the bank site (including, but not limited to, grading, planting, and restoration of hydrology) must be completed no later than the end of the first full growing season following the initial debiting of the bank, or if dormant season planting is used, by December 15. Initial debiting of the bank is defined as the date of the first approved sale from the bank under the allowable pre-construction sales established in this agreement. This provision is not applicable to single user banks.

6. No Department of the Army permits will be granted to applicants proposing to use a mitigation bank unless credits are available in the bank, as determined by the Chicago District. In accordance with the rules governing the sale of credits as set out above, credits may be acquired by qualified buyers as compensatory mitigation to offset unavoidable losses to aquatic resources on the following basis:

a. In cases where banking credits are being acquired within the same watershed as the bank site (Appendix A), the following criteria apply:

i. If the credits are certified by the Chicago District, one credit shall be acquired for every acre of aquatic resource to be filled or adversely impacted;

ii. If the credits are uncertified, qualified buyers must acquire 1.5 credits for every acre of aquatic resource filled or adversely impacted.

b. For mitigation sought at a bank outside of the watershed boundaries that has been determined to be more practicable and environmentally desirable (e.g., credits sought outside of the watershed but closer to the proposed impacts), higher mitigation ratios may be waived, and will be determined by the District on a case-by-case basis.

7. The bank sponsor shall provide a completed sales form (Appendix D) to the Chicago District confirming each credit(s) transaction made to qualified buyers. In situations where the agreement to buy credits between bank sponsor and permittee(s) is terminated, the sponsor shall provide written notification to the District within 15 days of said action.

8. The bank sponsor shall keep a current and accurate ledger (Appendix E) of all available

credits, whether purchased or un-purchased, and of all credits sold or otherwise debited. This ledger shall be made available to the interagency review team upon request.

9. An audit will be completed yearly by the Chicago District. The sponsor must submit a ledger report showing the beginning and ending balance of available credits and permitted impacts for each resource type, all additions and subtractions of credits and any other changes in credit availability (e.g. additional credits released, credit sales suspended). In addition to the ledger submission, the bank sponsor shall provide to the District confirmation of their financial assurances, written verification of site control (permission to utilize the site by owner) and confirmation (or letter of intent) of the long term manager for the site. The annual financial assurance report shall include the beginning and ending balances, including deposits into and any withdrawals from the accounts providing funds for bank operations and long term management activities. The report should also include information on the amount required for operations and long term management, its current status, and the potential expiration date. Submission of all the above noted information shall be made by February 15 of each calendar year.

10. The operational life of a bank shall consist of the period during which the terms and conditions of the banking instrument are in effect. With the exception of arrangements for the long-term management and protection in perpetuity of the wetlands and/or other aquatic resources and associated uplands, the operational life of a mitigation bank terminates at the point when;

a. Compensatory mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice from the bank sponsor to the Chicago District; and

b.. The IRT has determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument and associated documents, including the performance standards outlined in this agreement.

11. During the construction phase of the mitigation bank, qualified personnel must make periodic inspections of the site to ensure that soil erosion control measures are employed and functioning properly. Inspection reports shall be submitted to the Chicago District on a monthly basis during construction and planting.

12. Monitoring (See Appendix B) shall occur for a period of a minimum five years from the date of the completion of the approved planting plan or such time as all performance standards are met. The District, in consultation with the IRT will determine when the monitoring requirements have been satisfied. Management shall proceed on a continuing basis from the completion of planting through the end of the monitoring period. Management shall proceed as needed to reconcile current conditions with functional goals. Any required remedial measures will be

based on information contained in monitoring reports and/or from IRT site inspections.

13. The monitoring results of the mitigation bank shall be provided to all members of the IRT on an annual basis until all performance standards are met and all credit sales are complete (See Appendix B). Joint field inspections by the IRT shall be conducted on a regular basis.

SECTION 13 - LONG TERM MANAGEMENT

1. The bank sponsor shall submit a long term management strategy with an associated financial assurance plan for IRT approval prior to validation of the banking instrument. The strategy must include a description of long-term management needs, annual cost estimates for those needs, and identify the funding mechanism that will be utilized to meet the needs. The bank sponsor shall also identify (for the consideration and approval of the IRT) the entity responsible (and provide supporting documentation, e.g. agreement or letter of intent) for the ownership and long-term management of the site. This is required for the banking instrument. Identifying the responsible entity prior to permit issuance will aid in the processing of the instrument. It is preferred that the proposed long term manager or organization have expertise in executing adaptive management procedures. Bank sponsors shall establish agreements for long-term management with public or private conservation organizations with final approval of the IRT.

2. All land, including associated uplands, which are part of the mitigation bank shall be protected from future development by a permanent conservation easement, deed restriction or other real estate instruments as deemed appropriate by the District. The instrument must be prepared as per the terms noted in 33 CFR Part 332.7 (a)(1-5). This easement or deed restriction, along with a map of the site, must be recorded with the appropriate county register of deeds, attached to the abstract of title, with a certified copy of the registration provided to the Chicago District prior to bank authorization. .

3. Examples of long term management agreements are noted at Appendix F.

SECTION 14 - BANK NON-COMPLIANCE/MODIFICATION

1. If a bank does not comply with the terms of its banking instrument, e.g., does not meet its performance standards, or sells more than the number of authorized credits released by the District, for whatever reason, the Chicago District shall inform the bank sponsor and will specify a reasonable period of time in which to comply. Continued non-compliance of the bank shall result in revocation of the banking instrument and forfeiture of all financial securities.

2. Should modifications to the banking instrument be required, any recommended changes shall be reviewed by the IRT, and written notification by the Corps will be made to the bank sponsor upon any decision-making.

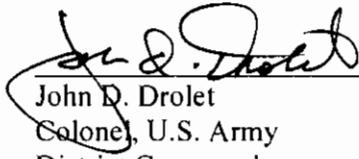
SECTION 15 BANK TRANSFER

Transfer or sale of the mitigation bank may occur to a party willing and financially able to abide by the terms and conditions of the approved banking instrument entered into by the IRT and the bank owner. Any such transfer shall be approved in writing by the IRT. If the structures or work authorized by the instrument are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of the instrument and the associated liabilities associated with compliance with its terms and conditions, a signature by the transferee will be required. Reference the last page of the banking instrument for this requirement.

SECTION 16 - AGREEMENT MODIFICATION/TERMINATION

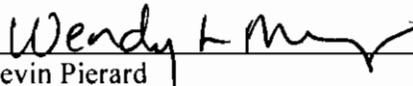
This agreement may be modified at any time by the joint agreement of the signatories. A party may terminate its participation in this agreement upon thirty (30) days written notice to all other signatories .

SECTION 17 SIGNATURES OF FEDERAL OFFICIALS



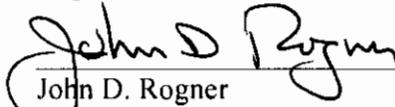
John D. Drolet
Colonel, U.S. Army
District Commander

25 June 08
DATE

For 

Kevin Pierard
Chief, Watersheds and Wetlands Branch
U.S. Environmental Protection Agency,
Region V

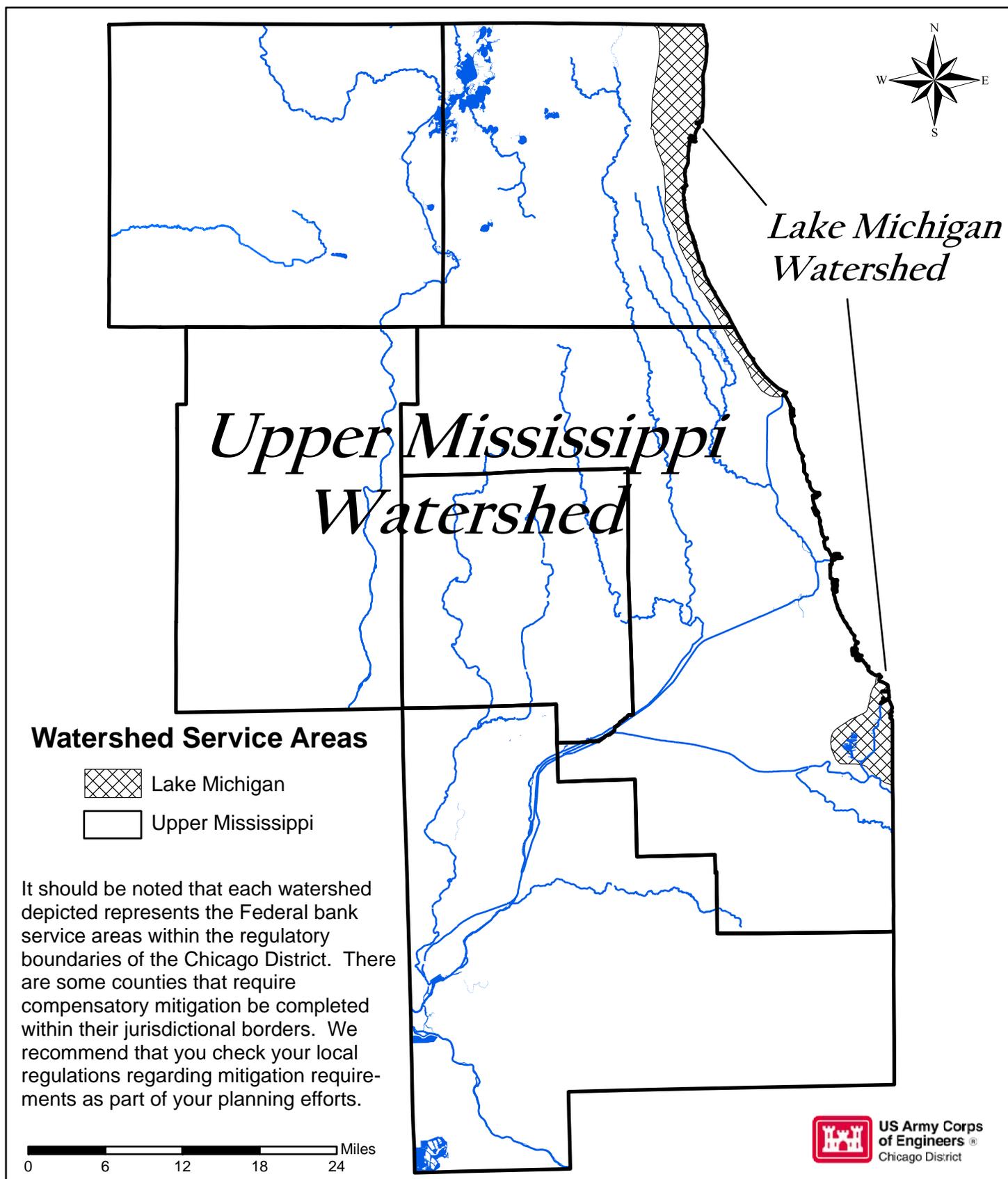
6/26/08
DATE



John D. Rogner
Field Supervisor
Chicago Illinois Field Office
U.S. Fish and Wildlife Service

26 June 2008
DATE

Watershed Service Areas



APPENDIX B.

PERFORMANCE and MONITORING STANDARDS

June 2008

The following monitoring and performance standards are established to ensure that mitigation banks create aquatic resources (wetlands or other waters of the U.S.) which compare favorably with moderate to high quality natural aquatic resources/wetlands with respect to diversity, abundance and distribution of plant species, and also to ensure that the created aquatic resources/wetlands exhibit the hydrologic regimes of natural wetlands and other waters. These standards will be used to measure the performance of mitigation banks unless otherwise stated in the banking instrument. Other standards may be proposed by the bank sponsor if native plant restoration is not the primary goal of the mitigation bank. For example, wildlife habitat enhancement goals may require the development of alternative standards based on habitat structure such as the interspersion of open water and cattails, or the seasonal establishment of mud flats. Justification for alternative standards must be provided in the bank prospectus. The Chicago District (District), in consultation with the IRT, retains approval authority for any performance standards proposed which are different from those contained in this appendix.

The term plant community as used in this appendix refers to, but is not limited to, marsh, wet prairie, sedge meadow, or to a mesic prairie buffer.

MONITORING STANDARDS

Monitoring and data collection are intended to assess whether the mitigation bank has attained the following performance standards for full credit release and certification. Monitoring is required for a minimum of five (5) years from the completion of planting of the wetland area. It must also be recognized that monitoring may need to continue beyond the minimum five (5) year period until full performance standards are attained. This may be especially true for forested communities with a longer growing time to maturity.

Wetland Delineation

To meet full performance standards, a routine wetland delineation must be performed to verify the total acreage of wetlands and waters achieved on site. Wetland areas must be staked for final inspection by the IRT. Property boundaries for the bank site must be marked as well. The delineation must be included/reported in the final monitoring report, if not before. It is recognized that the actual acreage of aquatic resources/wetland will vary from that in the plans; however, it must approach or exceed the acreage specified in the banking instrument/permit.

Vegetation Monitoring

Permanent straight line sampling transects must be established, plotted onto project drawings and a current aerial photograph of the site, across each proposed plant community of the

mitigation bank site. Sufficient transects must be established to provide full representation of all plant communities within the site, which might include more than one of each type. Each transect must consist of a series of 1.0 square meter quadrats (no fewer than 10) at regular or random intervals (5-10m suggested interval). The number of quadrats depends on system complexity and the size of each plant community for which credit is sought. A rough guideline is 2 quadrats per acre in each plant community as a minimum. The plant sampling must be done in May/June and August/September each year following the initial planting, throughout the monitoring period. Data shall be reported by plant community, and by transect. A total plant species list should be compiled over the entire site for which credit is sought. Data may be summarized by plant community for which credit is sought in monitoring reports, however, the full sampling data should be provided in an appendix to the annual monitoring report. Species dominance shall be determined by calculating importance values, with at least the following two parameters: frequency and percent cover. Absolute percent aerial cover data should be reported, though the frequency and cover may be relativized to calculate Importance Values (e.g. $RF + RC = IV$).

Hydrology Monitoring

Within each plant community for which credit is sought, wetland hydrology must be independently demonstrated from data gathered from monitoring wells and/or peizometers placed throughout the bank site. The plans for well/peizometer placement must be approved by the IRT prior to approval of the bank. Monitoring data should be collected from the wells/peizometers at a minimum on a weekly basis throughout the growing season. Automated continuous water level recorders are encouraged, and should be downloaded monthly to avoid more significant loss of data in the event of vandalism or other failure. For the hydrology standard, the growing season is defined as April 15 – October 20. This growing season definition is the average of the growing seasons of the six Chicago District Counties as noted in the Chicago District Regulatory Bulletin, dated 19 June 2006.

PERFORMANCE STANDARDS

At a minimum, any aquatic resources/wetlands established, created or restored for credit shall meet the criteria for wetlands detailed in the 1987 Corps of Engineers Wetlands Delineation Manual, and/or any regional supplement of the Delineation Manual utilized by the District at the time the mitigation bank was established, or other such Federal manual used by the Chicago District at the time the mitigation bank was established.

Vegetation Performance Standards

1) A temporary cover crop must be planted on all slopes immediately upon completion of any earthwork to prevent soil erosion. Soil erosion and sediment control measures must be in place during all construction work. An erosion control blanket may also be required depending on site conditions and season of planting. Within three (3) months, at least 90% of this area, as measured by aerial coverage, will be vegetated. If the desired long-term slope vegetation is not planted with

the temporary crop, it must then be planted in the first available growing season appropriate for each plant community. All cover crop species must be nonpersistent or native and not allelopathic.

2) Species selected for the planting shall be native to the county where the bank is located (ref. Swink and Wilhelm, *Plants of the Chicago Region*, 1994), and shall be appropriate for the hydrologic zone to be planted. A minimum number of native perennial species proposed for establishment must be present within each plant community to meet certification standards, as follows:

-Marsh- minimum of 15 native perennial species

-Sedge meadow/wet prairie- minimum of 35 native perennial species

-Mesic Prairie (buffer) - minimum of 25 native perennial species

3) At least 50% of the required minimum number of species must occur at a 10% frequency or greater, within each plant community zone or area. Multiple transects within a given plant community may be combined for this frequency analysis.

4) A native mean coefficient of conservatism value (native mean C value) of greater than or equal to 3.5 must be achieved in each separate vegetated plant community (*e.g.* wet prairie, marsh, mesic prairie buffer), and as measured over the entire mitigation bank area. Native plant species coefficients of conservatism are designated in Swink, Floyd and Gerould Wilhelm, *Plants of the Chicago Region* (Indianapolis: Indiana Academy of Science, 4th edition, 1994).

5) The native floristic quality index value (native FQI) must be greater than or equal to 20 in each separate vegetated community zone and as measured over the entire mitigation bank site. The floristic quality assessment method is described in Swink and Wilhelm, *Plants of the Chicago Region*.

Steps # 4 and #5 are evaluated based upon the overall plant community inventories as well as transect summaries. If a portion of the site has achieved compliance with the performance standards, the standard must be maintained in that portion until the final compliance sign off for the bank.

6) No area over the entire mitigation bank site greater than 1 square meter shall be devoid of vegetation, as measured by aerial coverage, unless specified on approved mitigation plans. This standard does not apply to emergent and aquatic communities.

7) None of the three most dominant plant species in any of the wetland community zones may be non-native species or weedy species, including but not limited to *Typha angustifolia*, *Typha X glauca*, *Phragmites australis*, *Lythrum salicaria*, *Salix interior*, or *Phalaris arundinacea*, unless otherwise indicated on the approved mitigation plan. These species shall not cumulatively comprise more than 5% of the total percent cover (not relative cover) for each community.

8) The native perennial species within each wetland plant community shall represent at least 80% of the total dominance measure. A lower percent native perennial species of the total dominance measure may be acceptable IF it is demonstrated with transect data that the remaining dominance percentage is by native annual and biennial wetland plant species and the FQI and mean C standards are exceeded.

9) A vegetation map of the bank site based on as-built drawings developed at the completion of implementation must be submitted. This information must be descriptive and define the limits of all vegetation areas by community type, based on field observations. The permanent transects must be shown on this map. Representative photographs of each vegetation area by general community zone must be submitted to the IRT.

Interim Vegetation Performance Standards.

These Interim Vegetation Performance Standards must be met for release of an additional 20% of the credits, after the initial release and the 15% credit release for hydrology demonstration. The mean C value shall be at least 2.5 and the FQI shall be at least 15 in each plant community. Each plant community shall have a minimum of 50% total aerial coverage by native perennial species. Invasive species shall not comprise more than 20% of the total cover of any plant community. [NOTE: Changes made to match prior paragraph on credit release.]

Hydrology Performance Standards.

Consistent with the Corps of Engineers Wetlands Delineation Manual (1987) and/or any appropriate regional supplements, all areas to receive credit as wetland plant communities shall have soils saturated within 12 inches or less of the ground surface for at least 12.5% of the growing season as defined in this ICA. To meet this standard the bank must demonstrate inundated or saturated soils **for 23 consecutive days during the growing season**. In addition to this minimum, hydrology data should reflect a hydrologic regime that is appropriate to the native plant community proposed for establishment.

This hydrology standard shall be maintained throughout the monitoring period, and demonstrated each year, following the monitoring guidelines outlined above.

LETTER OF CREDIT

[NAME OF BENEFICIARY]
[ADDRESS OF BENEFICIARY]

Attn: [BENEFICIARY POINT OF CONTACT]

We hereby establish our Letter of Credit dated [DATE], in favor of [NAME OF BENEFICIARY] as beneficiary (the "Beneficiary"), at the request and for the account of [NAME OF MITIGATION BANK COMPANY], an Illinois corporation with an address at [ADDRESS OF MITIGATION BANK COMPANY] (the "Account Party"), in the amount of [AMOUNT OF LETTER OF CREDIT], subject to reduction and/or cancellation as provided herein, and available upon presentation by Beneficiary of:

1. A time draft in the form of Exhibit A hereto, appropriately completed and bearing reference to this Letter of Credit and stating the amount being drawn, together with
2. A signed statement by an authorized representative of the Chicago District, U.S. Army Corps of Engineers ("Corps) describing in reasonable detail in what respect(s) the Account Party is in violation of the Permit (as defined in Exhibit B to this Letter of Credit) and declaring that the amount of the draft is payable pursuant to the Permit and the applicable law described therein.

1. Purpose and Use of Letter of Credit; Non-assignability. The Account Party has caused this Letter of Credit to be issued to provide security against a default by the Account Party in its execution of the Project described on Exhibit B to this Letter of Credit, the Permit, and shall inure to the benefit of the Beneficiary. Neither this Letter of Credit nor any rights with respect thereto may be assigned or otherwise transferred, in whole or in part, to any other person or entity without the express written consent of the Corps.

2. Effectiveness and Expiry of Letter of Credit. This Letter of Credit is irrevocable and effective on [DATE], and shall expire on [DATE (MINIMUM LENGTH OF TIME, SEVEN (7) YEARS)], in each case subject to reduction and earlier expiration and cancellation as provided in Section 4 of this Letter of Credit.

3. Honoring of Draws. Whenever this Letter of Credit is drawn on under and in compliance with the terms of this Letter of Credit, we will duly honor such draft upon presentation to us. Multiple drawings are permitted hereunder. Draws under this Letter of Credit shall be presented to us at the [NAME OF GRANTOR], [ADDRESS OF GRANTOR] Attn: [GRANTOR POINT OF CONTACT]. All or any part of this Letter of Credit may be drawn upon by the Beneficiary, upon written request of the Beneficiary, and in accordance with the terms of the Permit, to be used to complete the Project as provided in the Permit, if the Account Party or any successor-in-interest of the Account Party fails to do so, subject to the other terms and provisions of this Letter of Credit. Draws under this Letter of Credit may not be

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reinstated, but each such draw shall permanently reduce the amount available under this Letter of Credit by the amount drawn.

4. Reduction of Letter of Credit Amounts; Cancellation of Letter of Credit. In addition to reductions in the amount available under this Letter of Credit described in the foregoing Section and notwithstanding any other term or provision of this Letter of Credit or the Permit to the contrary:

- (a) upon fulfillment, as reasonably determined in writing by the Corps, of the requirements set forth in the second sentence of the second paragraph of numbered paragraph 6 of the "Special Conditions" section of the Permit, the stated amount of this Letter of Credit shall be automatically reduced to the lesser of (i) [DOLLAR AMOUNT] and (ii) the then-undrawn amount of this Letter of Credit; such determination shall be made by letter and or electronic communication; and
- (b) upon fulfillment, as reasonably determined in writing by the Corps, of the requirements set forth in the third sentence of the second paragraph of numbered paragraph 6 of the "Special Conditions" section of the Permit, the stated amount of this Letter of Credit shall be automatically further reduced to the lesser of (i) [DOLLAR AMOUNT] and (ii) the then-undrawn amount of this Letter of Credit; such determination shall be made by letter and or electronic communication; and
- (c) upon fulfillment, as reasonably determined in writing by the Corps, of the requirements set forth in the first sentence of the third paragraph of numbered paragraph 6 of the "Special Conditions" section of the Permit, this Letter of Credit shall automatically expire and be of no further force and effect; such determination shall be made by letter and or electronic communication;
- (d) in the event that (i) the Account Party at any time sells, exchanges, gifts, donates or otherwise directly or indirectly transfers, in one or more transactions, all or a substantial part of the Property or its rights in the Property, or (ii) the Account Party enters into any agreement to make any such transfer (each such transfer or agreement to transfer, a "Transfer"), to any person or entity (each a "Transferee"), this Letter of Credit shall continue in force until the earlier to occur of (A) the provision by or for the account of such Transferee of a substitute letter of credit or other financial assurance reasonably acceptable to the Corps and us, or (B) thirty (30) days following such Transfer, whereupon this Letter of Credit shall automatically expire and be cancelled without the consent of the Beneficiary or the Account Party; provided, however, that the provisions of this Section 4(d) shall not apply to any Transfer of Credits in the ordinary course of the Account Party's execution of the Project as contemplated by the Permit.
- (e) Should the Account Party not be able to complete the work as covered by the Permit, the beneficiary is to complete the Project as provided in the Permit.

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ICA on Mitigation Banking June 2008

5. **Applicable Law; Incorporation.** This credit is subject to the Illinois Uniform Commercial Code and the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce. In the event of any inconsistency, the Illinois Uniform Commercial Code shall apply. Exhibits A and B to this Letter of Credit are hereby incorporated herein by reference.

6. **Representation of Authority.** The undersigned person does hereby represent and warrant that he/she is authorized to execute this Letter of Credit on behalf of the [NAME OF GRANTOR], an Illinois corporation.

[The rest of this page is intentionally left blank. Signature page follows.]

[DATE]

[NAME OF LETTER OF CREDIT GRANTOR]

By: _____
Its: _____
Authorized Officer

ACKNOWLEDGMENT

By its signature below, the undersigned acknowledges issuance of the above Letter of Credit, but such acknowledgment is given without receipt of any consideration therefor, and without the undersigned becoming an obligor or otherwise assuming any liability whatsoever under the Letter of Credit.

Dated: MM/DD/YYYY.

[NAME OF MITIGATION BANK COMPANY]

By: _____
Its: _____
Authorized Officer

[Acknowledgment by [NAME OF MITIGATION BANK OWNER]

Exhibit A

Form of Time Draft

\$ _____ Chicago [month/day], 20 _____

_____ Five Business Days after sight _____ Pay to the

Order of _____ [NAME OF BENEFICIARY]

_____ and _____ /100 Dollars _____

Value Received and charge same to the account of _____ [MITIGATION BANK COMPANY]

[NAME OF BENEFICIARY]

By: _____

Its: _____

Exhibit B

Project Description. The Project consists of the establishment and operation of a wetland mitigation bank, denominated as NAME OF MITIGATION BANK and located in CITY, XXXX County, Illinois, (Quarter of Section X, Township XX North, Range XX East) (the "Property").

Issuance of Permit. The Project has received a permit issued by the Chicago District, U.S. Army Corps of Engineers in form described as "Department of the Army Mitigation Banking Instrument," for Permit Number XXXXXXXXXX and executed on [DATE] (the "Permit"). The Project will include construction, planting and maintenance activities, all as more fully described in the Permit.

Transfer of Credits. Pursuant and subject to the provisions of the Permit, the Account Party will be entitled to sell wetland credits (as described in the Permit, "Credits").

*****MITIGATION BANKER'S LETTERHEAD*****

Mitigation Bank Credit Sales Form

1. Mitigation Bank Name:
2. Names of Persons/Company Buying Bank Credit(s):
 - a: Address:
 - b: Phone Number
3. Amount of Bank Credits purchased (in acres)
4. Credit Applied to US. Army Corps of Engineers Permit Number: (and/or other permit number if Corps permit number is not applicable):
5. Mitigation Bank Phase the Credit will be debited from (if applicable)
6. Is this a certified credit sale (Y/N)

Statement of Verification:

The undersigned certifies and verifies under penalty of perjury pursuant to 29 U.S.C. §1746 that payment for wetland mitigation credits has been received by **[Name of Bank Company]** as described above and requests that said credits be deducted from the above named bank ledger under the aforementioned U. S. Army Corps of Engineers Permit Number.

Name of Mitigation Banker Date Name of Company

ICA on Mitigation Banking June 2008

Example for Forest Preserve District's intent to be Long Term Manager

BANKER NAME Date ADDRESS

Dear "BANKER":

This letter is to confirm the Forest Preserve District of "Name" County's intent to accept property known as the "Name" Wetland Mitigation Bank, This property was identified as a portion of a much larger acquisition "opportunity area" in our "YEAR" Land Acquisition Plan.

The property consists of XX acres of your ownership (and additional XX acres of associated easement). It is understood that the property would be made available to the District at the time the bank is in compliance with the requirements of the US Army Corps of Engineers permit number XX and after all wetland credit sales are completed. The District will accept responsibility as the site owner and steward in perpetuity, just as we would on any other Forest Preserve property.

The final acceptance of the property will be subject to a contract that will need to be approved by the District's Board of Commissioners. Also, it will need to be demonstrated that the property is free of contamination and not subject to other detrimental liabilities.

Sincerely,

General Superintendent

CC: USACE
IRT Members

ICA on Mitigation Banking June 2008

*****Example for a Land Conservancy's intent to be Long Term Manager*****

BANKER NAME Date ADDRESS

Dear "BANKER":

THE LAND CONSERVANCY (TLC) expresses its intent and commitment to accept the parcel of land known as the "Name" Wetland Mitigation Bank from BANKER COMPANY NAME. BANKER COMPANY NAME will donate, free and clear, fee simple title to the subject property upon completion of wetland credit sales and all wetland bank permit requirements stipulated in the U.S. Army Corps of Engineers permit number **XX**.

The parcel known as the "Name" Wetland Mitigation Bank consists of XX acres and is located in LOCATION DESCRIPTION.

At the time of transfer, BANKER COMPANY shall provide TLC a copy of the most current plat of survey with a legal description of the subject property. BANKER COMPANY shall provide information to represent the subject property is (1) free from all liens and encumbrances; (2) in compliance with all applicable environmental laws and is free of any hazardous waste or debris; and (3) not currently the subject of any litigation.

As discussed, TLC understands that we are making a commitment to manage the property in perpetuity. TLC will work with BANKER COMPANY to ensure that the organization is able to properly manage the property in perpetuity so to meet the ecological needs of the site as it was restored.

Sincerely,

Executive Director

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